

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MERCURY INTERNET AND WIRELESS SERVICE, Respondent.	DOCKET NO. FCU-03-59
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**ORDER DOCKETING FOR FORMAL PROCEEDING
AND REQUESTING RESPONSE**

(Issued January 20, 2004)

On December 22, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in C-03-257, involving Mercury Internet and Wireless Service (Mercury), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceeding (which is a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On November 18, 2003, Ms. Clarice Baiotto of All American Turf Beauty, Inc. (All American), submitted a complaint with the Board alleging that Mercury billed unauthorized charges for Internet services to All American's telephone bill. Board staff identified the matter as C-03-256 and, pursuant to Board rules, on November 24, 2003, forwarded the complaint to Mercury for response within ten days. Mercury did not respond within the ten-day time limit.

On December 8, 2003, Board staff issued a proposed resolution describing these events and finding by default that Mercury had violated the Board's anti-cramming rules. The proposed resolution directed Mercury to fully credit all charges on All American's account and to close All American's account. No party other than the Consumer Advocate has challenged the staff's proposed resolution.

In its December 22, 2003, petition, Consumer Advocate asserts that a civil penalty should be imposed against Mercury to deter future cramming violations. In addition, Consumer Advocate asserts that other slamming complaints received by Board staff have named Mercury as the alleged violating company. Consumer Advocate requests the Board docket this complaint for formal proceeding and impose civil penalties on Mercury. Mercury has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date as well as the additional cramming complaints made against Mercury and finds that there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a

procedural schedule until March 19, 2003, and allow Mercury the opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Impose Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on December 22, 2003, identified as Docket No. FCU-03-59, is granted and docketed for formal proceeding.

2. Mercury Internet and Wireless Service is requested to file a response to the petition filed by Consumer Advocate on December 22, 2003, on or before March 19, 2003.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20th day of January, 2004.